

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

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UNITED STATES OF AMERICA, ) Criminal Case No. 5:07cr00012-2  
)  
)  
)  
v. ) **FINAL ORDER ADOPTING**  
) **REPORT AND RECOMMENDATION**  
)  
FERNANDO ROCHA FUENTES. ) By: Hon. Samuel G. Wilson  
) United States District Judge  
)

Fernando Rocha Fuentes brings this action under 28 U.S.C. § 2255, alleging that counsel provided ineffective assistance by forcing him to accept a plea agreement and failing to file an appeal upon Fuentes' request. The United States filed a motion to dismiss, and by order entered February 2, 2009, the court referred the matter to United States Magistrate Judge Michael F. Urbanski for an evidentiary hearing to determine whether Fuentes requested that his attorney file an appeal. The Magistrate Judge conducted an evidentiary hearing on June 9, 2009 and filed a Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B), finding that both of Fuentes' claims were without merit and recommending Fuentes' § 2255 motion be dismissed. Fuentes filed objections, largely reiterating the arguments made in his pleadings and at the evidentiary hearings. Having reviewed the Report and Recommendation, the objections thereto, and relevant portions of the record de novo, in accordance with 28 U.S.C. § 636(b)(1), the court agrees with the Magistrate Judge's recommendation.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Magistrate Judge's Report and Recommendation (docket no. 214) is **ADOPTED** in its entirety, the government's motion to dismiss (docket no. 194) is **GRANTED**, Fuentes' § 2255 motion (docket no. 185) is **DISMISSED**, and this case is **STRICKEN** from the active docket of the court.

The Clerk of Court is **DIRECTED** to send copies of this order to the parties.

**ENTER:** This 8<sup>th</sup> day of July, 2009.

United States District Judge